EXHIBIT E

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   Oracle Corporation, Oracle USA, Inc.,
   and Oracle International Corporation

15   UNITED STATES DISTRICT COURT

16   NORTHERN DISTRICT OF CALIFORNIA

17   SAN FRANCISCO DIVISION

18

19 ORACLE CORPORATION, a Delaware   Case No. 07-CV-1658 MJJ
   corporation, ORACLE USA, INC., a Colorado
20 corporation, and ORACLE INTERNATIONAL   **PLAINTIFFS' RESPONSES AND**
21 CORPORATION, a California corporation,   **OBJECTIONS TO DEFENDANT**
                                               TOMORROWNOW, INC.'S FIRST
                                               SET OF INTERROGATORIES
22   Plaintiffs,
        v.
23
   SAP AG, a German corporation, SAP
24 AMERICA, INC., a Delaware corporation,
   TOMORROWNOW, INC., a Texas corporation,
25 and DOES 1-50, inclusive,

26   Defendants.

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                                                                    07-CV-1658 MJJ

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RESPONSES AND OBJECTIONS TO FIRST SET OF INTERROGATORIES

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5 **INTERROGATORY NO. 1:**

6   Describe in as much detail as possible Oracle's investigation of the activities alleged in

7 the Complaint ("the investigation"), including the date the investigation began, the date it was

8 completed, how the investigation was conducted, including any computer forensics tools or other

9 software applications that were used, the sources of information, including documents reviewed

10 and persons consulted, the results of the investigation, and the identities of all persons and

11 entities involved in, or knowledgeable about, the investigation, including, for each person, their

12 name, business address, job title (currently and at the time of the investigation), and role in the

13 investigation, and for each entity, the name, business address, role in the investigation, and

14 affiliation, if any, with Oracle.

15 **RESPONSE TO INTERROGATORY NO. 1:**

16   In addition to its General Objections, Oracle objects that its factual investigation, which

17 has taken many Oracle employees months to conduct and is not yet complete, is too complex and

18 detailed to describe in an Interrogatory Response. Oracle further objects that the Interrogatory is

19 compound and actually consists of many Interrogatories. Oracle also objects that its

20 investigation into the circumstances of defendants' intrusion into and theft from Oracle's systems

21 is not yet complete. This Response does not reflect work done and analysis made by Oracle's

22 experts. Oracle further objects to the extent the Interrogatory purports to require Oracle to create

23 a compilation, abstract, or summary from business records that Oracle has already produced or

24 will produce. Oracle further objects to the extent that this Interrogatory calls for information

25 protected by the attorney-client or work product privileges.

26   Subject to and without waiver of these objections, Oracle responds as follows:

27   Beginning in fall 2006, members of Oracle's Product Support team led by Buffy Ransom

28 observed unusual activity and behavior by some Customer Connection users. This behavior

PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT TOMORROW.NOW, INC.'S FIRST SET
OF INTERROGATORIES

1 included the use of inconsistent user IDs as well as unusual patterns of downloads. The Product

2 Support team requested investigative assistance from the Global Information Security ("GIS")

3 team, which assists in internal Oracle investigations relating to Oracle's computer systems.

4 Other Product Support team members led by Paul Brook later discovered spikes in the number of

5 Customer Connection users who responded that searches had not solved their problems. These

6 spikes seemed to indicate unusually heavy activity on Customer Connection, as numerous

7 download requests were being made at short intervals, separated only by seconds. In each

8 instance, the Product Support teams requested investigative assistance from the GIS team.

9   To determine the source of the downloads, GIS personnel, principally Dr. Uwe Kohler

10 and Marlene Veum, examined Oracle's internet and application server logs, including its reverse

11 proxy, Siteminder, and application server logs. Certain of these logs record download requests

12 made by users logged in to Customer Connection. The logs also record additional information,

13 including in some cases the internet protocol address ("IP address") from which that request

14 originated. By reviewing these server logs, Oracle determined that much of the download

15 activity originated from one particular IP address, 209.189.228.98. As an experiment, Oracle

16 shut down access to Customer Connection for that address; soon after, an essentially identical

17 pattern of download requests began coming from another IP address, 209.189.228.126.

18   Every IP address has a registered owner. Oracle used the publicly-available WHOIS

19 query/response protocol to determine the owner of the two IP addresses. Both are registered to

20 SAP TN, headquartered in Bryan, Texas.

21   After identifying the involved IP addresses, Oracle searched its server logs for all

22 publicly-known SAP TN IP addresses, including 209.189.228.98 and 209.189.228.126, using a

23 start search date of September 2006 (and ending with a date shortly before Oracle filed its

24 original complaint in this case). The search used by GIS extracted available information

25 associated with the download requests originating from the SAP TN IP addresses. The resulting

26 analysis revealed that of SAP TN's IP addresses, only 209.189.228.98 and 209.189.228.126 were

27 used to connect to Customer Connection. The resulting reports showed all log entries originating

28 from those two SAP TN IP addresses.

PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT TOMORROWNOW, INC.'S FIRST SET
OF INTERROGATORIES

1   In addition to the IP address information noted above, the server logs and the reports

2   created from them indicate when a download request is made from a particular IP address using a

3   particular set of log-in credentials (user ID and password). In some cases, the logs also capture a

4   company name, company ID, and identifying information related to the requested Software and

5   Support Materials. The company ID field is constant – it is tied to the original log-in credentials

6   for each specific customer. Using this field, Oracle can determine whose log-in credentials (*i.e.*,

7   which customer) are being used from a particular IP address. If the user has supplied other

8   information, for example by using the Change Assistant tool, the logs may reflect that additional

9   information as well, such as the user name, telephone number, and email address inputted by the

10   user.

11   Because each user ID and password used by SAP TN to log in to Customer Connection is

12   connected to a specific customer account, and also to the requesting IP address, the log entries

13   link the SAP TN requests to many different Oracle support customer accounts. From the data in

14   the log entries, Oracle initially determined that SAP used log-in credentials of the following

15   customers to access and download Software and Support Materials: Abbott Laboratories,

16   Abitibi-Consolidated Inc., Bear, Stearns & Co., Berri Limited, Border Foods, Caterpillar

17   Elphinstone, Distribution & Auto Service, Fuelserv Limited, Grupo Costamex, Helzberg

18   Diamonds, Herbert Waldman, Honeywell International, Interbrew UK, Laird Plastics, Inc.,

19   Merck & Co., Metro Machine Corp., Mortice Kern Systems, Inc., National Manufacturing, NGC

20   Management Limited, OCE-Technologies B.V., Ronis SA, Smithfield Foods, SPX Corporation,

21   Stora Enso, Texas Association of School Boards, VSM Group AB, and Yazaki North America.

22   These same log entries, and other reports generated by Oracle's software, including

23   Change Assistant, provide the specific identifiers for the individual Software and Support

24   Materials requested at any given time, using the log-in credentials of any given customer,

25   originating from any given IP address. Oracle analyzed these log entries and determined that,

26   since at least September 2006, Customer Connection had received hundreds of thousands of

27   requests for Software and Support Materials from SAP TN IP addresses. From the logs, Oracle

28   identified the specific product identification information for these requests. The Product Support

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1   team took this information and assessed for certain categories of downloads whether the

2   customer whose credentials SAP TN used for a particular download had a right to that

3   downloaded material.

4   During its analysis, Oracle also observed and concluded that SAP TN navigated the site

5   and downloaded Software and Support Materials in unusual ways. For example, when a

6   customer queries Customer Connection for knowledge solutions, the customer is prompted to

7   respond whether the search results satisfied the customer's issue or not. When the user clicks the

8   "no" response, Customer Connection takes that customer back to the initial query results. Thus,

9   a long series of "nos" will take a customer through all of the available knowledge solutions

10 responsive to a query. The logs demonstrate that SAP TN's knowledge solution searches were

11 extremely rapid incremental searches, with the "user" repeatedly clicking the "no" response at

12 the survey page. Oracle concluded that SAP TN users had probably employed an automatic

13 search script to select "no" after every search response in order to most rapidly download all of

14 the available knowledge solutions. Oracle further concluded that SAP TN users were able to

15 access non-public materials, not accessible through Customer Connection's search functions, by

16 apparently manually incrementing through URLs until non-public materials (such as proprietary

17 internal documents) were visible.

18 In its review of the server logs, Oracle also observed that individuals understood to be

19 former PeopleSoft employees, now working for SAP, appeared to have been involved in

20 downloading Software and Support Materials from Customer Connection. For example, Oracle

21 understands that Wade Walden, a former PeopleSoft employee, is now working for SAP TN.

22 Oracle observed several instances in server log entries where a request originating from an SAP

23 TN IP address included "Wade Walden" in the optional user-provided user name field.

24 In some cases, when a user has accessed Software and Support Materials through Change

25 Assistant, the logs also capture the remote machine name being used by a logged-in user from a

26 particular IP address to make the download request. Using this data, Oracle initially identified

27 thirty-four unique SAP TN machine names logged in to Customer Connection from the SAP TN

28 IP addresses, that were used to download Software and Support Materials from Customer

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1 Connection.

2 After completing the analysis described above, the Product Support teams and others

3 took the resulting list of specific Software and Support Materials downloaded from an SAP TN

4 IP address at a given time and using the log-in credentials of a given customer. The Product

5 Support teams then led the effort to determine whether the customer whose log-in credentials

6 SAP TN used was licensed to download the Software and Support Materials SAP TN

7 downloaded in the name of that customer. To conduct this analysis, the Product Support teams

8 determined (1) whether that customer had an active, paid support contract with Oracle at the time

9 of the downloads by SAP TN that would permit that customer to download Software and

10 Support Materials from Customer Connection, and, if so, (2) whether the customer had the right

11 to all of the products downloaded by SAP TN using that customer's log-in credentials at the time

12 SAP TN did the downloading.

13 The Product Support teams coordinated the effort to analyze customer software license

14 and support contracts for the current and former Oracle support customers listed above, among

15 others. Members of Oracle's Critical Accounts team helped verify the license status for certain

16 of the downloaded Software and Support Materials. The teams determined whether a given

17 customer had an active, paid support contract, and, if so, for which products. They then

18 compared the Software and Support Materials downloaded using that customer's log-in

19 credentials with the products covered by the customer's license(s). In this way, they determined,

20 for each customer, which materials downloaded in the name of a particular customer were within

21 that customer's support rights and which materials were not.

22 The Product Support teams also researched whether a given customer had a known

23 connection to SAP TN, such as a customer that had told Oracle that it was moving to SAP TN or

24 a customer listed by SAP TN as a current customer on SAP TN's website,

25 http://www.tomorrownow.com.

26 Through this contract analysis, the Product Support and Critical Accounts teams

27 determined that SAP TN accessed Customer Connection on behalf of two types of Oracle

28 support customers: (1) former Oracle support customers who had cancelled all Oracle support to

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PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT TOMORROWNOW, INC.'S FIRST SET
OF INTERROGATORIES

1 migrate to SAP TN; and (2) active Oracle support customers who switched support for one or

2 more Oracle software applications to SAP TN, but maintained at least one valid support

3 agreement for other Oracle software applications. In comparing the timing of the SAP TN

4 downloads with the full or partial expiration dates of the customers' Oracle support contracts,

5 Oracle determined that the SAP TN downloads typically would increase sharply just before a

6 customer's support contract with Oracle expired.

7   For both types of customers, the analysis showed SAP TN had downloaded Software and

8 Support Materials from Customer Connection using the log-in credentials of customers that were

9 not licensed to take the downloaded materials. Oracle has not yet completed its investigation as

10 to the total scope of the unlicensed downloading, however, Oracle has identified, to date, more

11 than 10,000 of these improper and unlicensed downloads by SAP TN of Software and Support

12 Materials relating to hundreds of different software programs in Oracle's PeopleSoft and J.D.

13 Edwards brands of enterprise software applications.

14   In addition, in December 2006, Oracle developed a knowledge solution related to the

15 2007 Daylight Savings Time change in the United States (the "DST Solution"). From December

16 2006 through the first several months of 2007, Oracle fielded more than a thousand customer

17 service requests related to the early Daylight Savings Time change, and Oracle's DST Solution

18 helped resolve more than 750 of those service requests for its customers.

19   In late March 2007, Oracle noticed that SAP TN posted a "PeopleSoft Daylight Savings

20 Time solution" on its website. SAP TN's solution is substantially similar in total and in many

21 places identical to Oracle's DST Solution. SAP TN's version of the solution even includes some

22 minor errors that were in Oracle's original DST Solution, but were later corrected by Oracle in a

23 revised version after January 16, 2007. SAP TN's version bears an SAP TN logo in place of

24 Oracle's own logo and copyright notice. Oracle subsequently traced downloads of its solution to

25 SAP TN's IP address on January 8, 2007 and January 15, 2007. Oracle has registered its

26 copyrights in the original version of the DST Solution, as well as its later corrected version,

27 which SAP TN also downloaded three weeks before Oracle filed the original Complaint in this

28 action.

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1   Oracle refers defendants to Customer Connection's server and network log files,

2   production of which is forthcoming.

3   Oracle identifies the following individuals involved in, or knowledgeable about, the

4   investigation, all of which may be contacted only through undersigned counsel. All individuals

5   are employees of Oracle unless otherwise indicated.

6   Edward Screven, Chief Corporate Architect. Mr. Screven's business address is ███

7   ████████████████████████████ Mr. Screven supervised and directed the

8   investigation.

9   Todd Barton, Vice President, Information Security. Mr. Barton's business address is

10 ████████████████████████████ Mr. Barton participated in early discussions

11 regarding the investigation and received occasional updates thereafter.

12 Dr. Uwe Kohler, Senior Director, Information Security – Compliance/Risk. Dr. Kohler's

13 business address is ███████████████████ Dr. Kohler helped direct and

14 participated in the investigation.

15 Marlene Veum, Director, Information Security. Ms. Veum's business address is ███

16 ████████████████████ . Ms. Veum helped direct and participated in the

17 investigation.

18 Eric Veum, Senior Manager – Compliance/Risk. Mr. Veum's business address is ███

19 ████████████████ . Mr. Veum participated in the investigation.

20 Steven Meert, Senior Manager – Compliance/Risk. Mr. Meert's business address is

21 ██

22 Mr. Meert participated in the investigation.

23 James Patrice, Vice President, Product Support. Mr. Patrice's business address is ███

24 ███████████████ . Mr. Patrice participated in the investigation.

25 Buffy Ransom, Senior Director, Enterprise One Support. Ms. Ransom's business address

26 is ███████████████ . Ms. Ransom helped direct and participated in the

27 investigation.

28 Tod Keifer, Senior Support Engineer. Mr. Keifer's business address is ███████

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OF INTERROGATORIES

1 ██████████████████. Mr. Keifer participated in the investigation.

2 Julie O'Shea, Principal Support Engineer. Ms. O'Shea's business address is ████

3 ████████████████████. Ms. O'Shea participated in the investigation.

4 Jason Rice, Principal Software Engineer. Mr. Rice's business address is ████

5 ████████████████████. Mr. Rice participated in the investigation.

6 Elizabeth Shippy, Business Analyst 4-Ops. Ms. Shippy's business address is ██████

7 ████████████████████. Ms. Shippy participated in the investigation.

8 Paul Brook, Senior Director, Enterprise Support. Mr. Brook's business address is ████

9 ████████████████. Mr. Brook participated in the investigation.

10 Sudhir Chilakapati, Senior Principal Support Engineer. Mr. Chilakapati's business

11 address is ████████████████. Mr. Chilakapati participated in the

12 investigation.

13 Sunder Subramanyan, Product Senior Principal Support Engineer. Mr. Subramanyan's

14 business address is ████████████████. Mr. Subramanyan participated in

15 the investigation.

16 Carlos Barradas, Senior Principal Critical Accounts Manager. Mr. Barradas's business

17 address is ████████████████. Mr. Barradas participated in the

18 investigation.

19 Lou Lopez, Director, Critical Accounts. Ms. Lopez's business address is ████

20 ████████████████. Ms. Lopez participated in the investigation.

21 Annette Horan, Principal Critical Accounts Manager. Ms. Horan's business address is

22 ████████████████████████. Ms. Horan participated

23 in the investigation.

24 Robert Monahan, Director, Logistics and Procurement Product Strategy. Mr. Monahan's

25 address is ████████████████. Mr. Monahan participated in the

26 investigation.

27 Angela Enyeart, Director of Strategy – E1. Ms. Enyeart's address is ████████

28 ████████████. Ms. Enyeart participated in the investigation.

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PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT TOMORROWNOW, INC.'S FIRST SET
OF INTERROGATORIES

1   Kem Butler, Product Strategy Director. Ms. Butler's address is ███████████,

2 ███████████. Ms. Butler participated in the investigation.

3   Gordon Smith, Director, Database Technologies. Mr. Smith's address is ██████

4 ████████████████. Mr. Smith participated in the investigation.

5   Nina Bankar, formerly Manager for the Server Tools Support Team. Ms. Bankar's

6 address is ███████████████. Ms. Bankar participated in the

7 investigation.

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9 **<u>INTERROGATORY NO. 2</u>:**

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PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT TOMORROWNOW, INC.'S FIRST SET
OF INTERROGATORIES

PROOF OF SERVICE

1

2   I am over 18 years of age, not a party to this action and employed in the

3   County of San Francisco, California at Three Embarcadero Center, San Francisco, California

4   94111-4067. I am readily familiar with the practice of this office for collection and processing

5   of correspondence by U.S. Mail and Electronic Mail, and they are deposited and/or sent that

6   same day in the ordinary course of business.

7   Today I served the following documents:

8   **PLAINTIFFS' RESPONSES AND OBJECTIONS TO
    DEFENDANT TOMORROWNOW, INC.'S FIRST SET OF
9   INTERROGATORIES**

10
    [X]   (BY ELECTRONIC MAIL) by transmitting via electronic mail document(s) in
11   portable document format (PDF) listed below to the email address set forth below
            on this date.
12
    [X]   (BY MAIL) by causing a true and correct copy of the above to be placed in the
13   United States Mail at San Francisco, California in sealed envelope(s) with postage
            prepaid, addressed as set forth below. I am readily familiar with this law firm's
14   practice for collection and processing of correspondence for mailing with the
            United States Postal Service. Correspondence is deposited with the United States
15   Postal Service the same day it is left for collection and processing in the ordinary
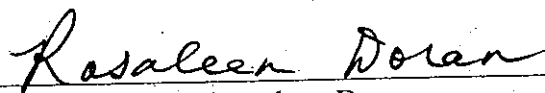   course of business.
16

17
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22

23   I declare that I am employed in the office of a member of the bar of this court at

24   whose direction the service was made and that this declaration was executed on September 14,

25   2007, at San Francisco, California.

26   _Rosaleen Doran_____
                                                          Rosaleen Doran
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PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT TOMORROWNOW, INC.'S FIRST SET
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